

APA
ATLANTIC PROCUREMENT AFFILIATES
Government Contact Intermediaries

Clark T. Corson
Ralph B. Pears

MEMORANDUM

To: C. Wayne Ives, NH Department of Environmental Services
From: Ralph B. Pears
Date: December 16, 2002
Re: Chapter Env-Ws 1900 Rules for the Protection of Instream Flow on Designated Rivers

I am writing on behalf of my client, Monadnock Mountain Spring Water Company, to express our general support for the proposed Instream Flow Rules (Env-WS 1900) being promulgated by the Department of Environmental Services. Monadnock's support for the proceedings should not be misconstrued as a blanket endorsement of all of the Department's proposed methods for protecting instream flows. Rather, ours is an expression of good faith support for the development of equitable and scientifically based standards for the desired protection of instream flow in the designated rivers. Monadnock supports the current rules in hopes that the pilot projects on the Lamprey and Souhegan Rivers will produce the desired and necessary scientific study and data to support appropriate measures for protecting instream flow and resolve many of the outstanding conflicts.

Monadnock continues to disagree with the Department's application of the rules at 1902.03 to the use of groundwater within 500 feet of a designated river. Currently there is no supporting scientific data to justify the application of restrictions to groundwater withdrawal within this zone. While some claim that it makes "hydrologic sense" to make this assumption, clear and convincing scientific evidence is lacking. We are in hopes that the scientific studies that will ensue from the pilot projects on the two rivers will help to resolve this matter. Moreover, we believe that it is the DES, which has the obligation to prove that there is hydrologic connectivity between the rivers and neighboring groundwater wells, before it proceeds with the implementation of any restrictions upon groundwater withdrawals during periods of 7Q10 low flows. DES should also be required to provide clear and reasonable evidence that any proposed restrictions on groundwater withdrawals will indeed have a mitigating effect on low instream flows.

Last but not least, Monadnock continues to believe that any arbitrary restriction imposed by the state upon such withdrawals may very well constitute an uncompensated "taking" of private property, and a denial of the "reasonable

New Hampshire Office:
107 N. State Street • Concord, New Hampshire 03301 • 603-226-4400 • Fax 603-226-4406
Maine Office:
Juniper Ledge Farm
P.O. Box 680 • Kennebunkport, Maine 04046 • 207-468-1165 • Fax 207-967-0697

APA

ATLANTIC PROCUREMENT AFFILIATES

Government Contact Intermediaries

Clark T. Corson

Ralph B. Pears

use” guaranteed by the Constitution. Nevertheless, Monadnock salutes the DES for its dedicated stewardship of water resources, and we applaud its continuing efforts to craft solutions to the State’s instream flow concerns that will balance the needs of all of our citizens without unfairly disenfranchising the historic rights of property owners. In spite of our philosophical disagreements, Monadnock stands ready to play a supportive and active participatory role in the forthcoming thoughtful and scientific examination of instream flow on the Lamprey and Souhegan Rivers, and we support the current regulatory proposal as a proper step in that direction. We look forward to working with you on this difficult issue during the months and years ahead, and we hope that many of the conflicting issues may be resolved through thoughtful and cooperative effort.

New Hampshire Office:

107 N. State Street • Concord, New Hampshire 03301 • 603-226-4400 • Fax 603-226-4406

Maine Office:

Juniper Ledge Farm

P.O. Box 680 • Kennebunkport, Maine 04046 • 207-468-1165 • Fax 207-967-0697